

Federal Award Identification Number: FSA21GRA0010554

AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
AND
THE ALABAMA DEPARTMENT OF AGRICULTURE & INDUSTRIES

FOR THE PURPOSE OF ESTABLISHING A
STATE GRANT TO PROVIDE ASSISTANCE TO
PRODUCERS IMPACTED BY HURRICANE
MICHAEL

Statement of Work

On behalf of the Secretary, U.S. Department of Agriculture, the Farm Service Agency (FSA) agrees to provide a grant to the Alabama Department of Agriculture & Industries (ADAI) (hereinafter referred to as the State) for distribution to eligible producers that suffered financial losses associated with Hurricane Michael in accordance with the terms of this Agreement.

A. BACKGROUND AND PURPOSE

The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116-20), as amended by the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94), provided funds for necessary expenses related to losses of crops, trees, bushes, and vines related to the consequences of Hurricane Michael and other selected weather events occurring in calendar years 2018 and 2019. Of the approximately \$3 billion available, the Secretary has directed FSA to provide \$14.9 million plus certain administrative costs delineated in this Agreement, in the form a block grant to the State. The grant covers qualifying losses associated with Hurricane Michael not covered by other USDA disaster programs for beef cattle, poultry, pecan production, horticulture crops (including bare-ground losses), and uninsured infrastructure losses.

B. DEFINITIONS

Under this Agreement, the following definitions apply:

1. Adult beef cow means a female bovine beef breed animal, greater than 800 pounds, that had delivered 1 or more offspring. A beef heifer shall also be considered an adult beef cow if it was of breeding age or pregnant as of October 10, 2018.
2. Bare-ground practices means cultivation methods associated with land structure recovery and land prep including mowing and harrowing under damaged plants and cover crop to prevent erosion.
3. Eligible county means a primary county declared as a disaster by the President or designated a disaster by the Secretary in the 2018 calendar year due to Hurricane Michael and Lee County tornados (for timber losses only), or any county contiguous to such declared or designated disaster county.
4. Eligible livestock means the total number of adult beef cows, as defined in this part, that were a part of a producer's on-farm, livestock inventory as of October 10, 2018.

5. Eligible livestock owner means an eligible producer, as defined in this section, that applied for assistance for the 2018 Livestock Indemnity Program (LIP), administered by FSA, U.S. Department of Agriculture, or had eligible livestock as of October 10, 2018.

6. Eligible loss means necessary expenses related to the following:

- Beef cattle
- Poultry
- Pecans
- Uninsured infrastructure
- Horticulture crops – bare-ground

7. Eligible producer is a producer that contributed land, capital, equipment, labor and/or management to a farming operation in an eligible county on October 10, 2018 or the lawful heirs of that producer. Foreign persons and legal entities containing members, stockholders or partners who are foreign persons are not eligible producers.

An eligible producer is a person or legal entity that must be a:

- citizen of the United States;
- resident alien; for purposes of this part, resident alien means “lawful alien” as defined in 7 CFR part 1400;
- partnership consisting solely of citizens or resident aliens of the United States; or
- corporation, limited liability corporation, or other farm organizational structure organized under State law consisting solely of citizens or resident aliens of the United States.

8. Farming operation means a business enterprise with an eligible producer as part of the operation engaged in producing agricultural products.

9. Foreign person means someone who is not a:

- citizen of the U.S.
- lawful alien possessing a valid Permanent Resident Card / Resident Alien Card (I-551).

10. Horticulture crops means nursery or specialty crops grown using bare-ground practice consisting of ornamentals, fruits, or vegetables.

11. Infrastructure means the physical structures, materials, and facilities (such as hoop houses, greenhouses, high tunnels, etc.) needed for the operation of an agricultural enterprise which includes, but is not limited to, the physical structures, materials, and facilities needed for irrigation (such as pivots, lines, etc.) not including separate generators and power systems.

12. Linkage means that as a condition of receiving payments under the terms of this Agreement, an eligible producer must agree to certain conditions set forth in this Agreement related to obtaining Federal Crop Insurance or Noninsured Crop Disaster Assistance (NAP) for future crop years in the county for the crops. See section E for additional details.

13. Poultry means domesticated fowl.

C. ASSISTANCE PROVIDED TO STATE

1. The total grant amount to the State for producer payments is \$14,900,000. Disbursement of these funds is contingent on FSA's approval of the State's Work Plan, described in section G

below.

2. In addition to the amount allocated for producer payments, FSA will provide an amount not to exceed five percent (5%) of the amount provided for eligible producer payments (\$14,900,000) to cover direct costs required to administer this grant in addition to indirect costs applied to administrative direct costs. The total funds paid to cover administrative costs under this Agreement shall not exceed \$745,000. The State will submit drawdown requests in accordance with the Work Plan as described in Section G of this Agreement.
3. Disbursement of administrative costs is contingent on FSA's approval of the Work Plan described in section G below and on FSA's receipt and approval of the State's proposed administrative costs budget.
4. All expenditures under this Agreement from the State to an eligible producer and the State's administrative costs must comply with the regulations, policies, guidelines and requirements as they relate to the applications, acceptance, and use of Federal funds for this Federally assisted project including: 2 CFR Chapter I (Office of Management and Budget Government-wide Guidance for Grants and Agreements) and Chapter II (Office of Management and Budget Guidance) as well as 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards); and any USDA implementing regulations, such as 2 CFR Part 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), 2 CFR Part 415 (General Program Administrative Regulations), 2 CFR Part 416 (General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments), and 2 CFR Part 418 (New Restrictions on Lobbying).
4. No eligible producer may receive payments in excess of \$900,000 for all types of assistance under this Agreement.
5. Direct attribution will not be applied to any recipient or sub-recipient under this Agreement.
6. AGI (Adjusted Gross Income) provisions do not apply to any recipient or sub-recipient under this Agreement.
7. The total amount of payments received by an eligible producer under this Agreement and applicable policies of crop insurance under the Federal Crop Insurance Act (7 U.S.C. 150 I et seq.) or the Noninsured Crop Disaster Assistance Program (NAP) under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) shall not exceed 90 percent of the loss.
8. The total amount of payments received by an eligible producer under this Agreement who did not obtain a policy or plan of insurance for an insurable commodity for the applicable crop year under the Federal Crop Insurance Act (7 U.S.C. 150 I et seq.) for the crop incurring the losses or did not file the required paperwork and pay the service fee by the applicable State filing deadline for a noninsurable commodity for the applicable crop year under NAP for the crop incurring the losses shall not exceed 70 percent of the loss.

D. PAYMENTS TO PRODUCERS

1. In order to assist eligible producers, the State will use the funds for losses associated with the following to aid in the recovery of farming operations:

Part 1: Beef Cattle
Part 2: Poultry
Part 3: Pecans
Part 4: Uninsured Infrastructure
Part 5: Horticulture Crops – Bare-ground

Part 1: Beef Cattle Losses

The State will issue payments to eligible livestock owners, as defined in Part B, for beef cattle losses due to Hurricane Michael. There are two formulas for capturing offspring losses resulting from the hurricane impacts and they include conception rate reductions that resulted in the stress placed on cattle and mortality loss of the breeding herd.

Conception losses will be determined based on the breeding age females in the herd at the time of the storm.

- a. Breeding age females at the time of the storm - the cows that died in the storm = the eligible animals for payment.
- b. Producers will be required to provide the conception rate (percentage) of the prior year and the conception rate (percentage) for the year following the hurricane.
- c. The conception rate prior to the storm - the conception rate after the storm = reduced conception rate (percentage).
- d. The eligible animals for payment (a.) x reduced conception rate (percentage) (c.) x \$661.19 = conception loss payment.

Offspring loss due to mortality of the breeding herd utilizes the breeding age females that died in the hurricane x \$661.19 = mortality loss payment

Key factor/note used for livestock: \$661.19 per cow reflects the 2018 Livestock Indemnity Program national average market price for 400-799 pounds non-adult beef animals with the 75% factor already applied.

Part 2: Poultry Houses.

The State will issue payments to eligible producers for poultry house losses due to Hurricane Michael. Eligibility is limited to poultry houses that had poultry present at the time of the hurricane and such poultry must have suffered a minimum 15 percent death loss as a result of Hurricane Michael to qualify for payment losses due to the hurricane. The impact of the hurricane had significant adverse effects to poultry houses including both damaged and destroyed houses. The following calculations will be used by type of poultry house.

- a. Destroyed broiler house: square footage of the broiler house destroyed x \$14/square foot x 75 percent - property & casualty insurance reimbursement = payment
- b. Damaged broiler house: square footage of the damaged house x \$5.50/square foot x 75 percent - property & casualty insurance reimbursement = payment

Key factor/note used for poultry calculation: The square footage rate of \$14 was established by ADA and industry leaders to represent average costs of rebuilding destroyed houses.

Part 3: Pecan Lost Income.

The State will issue payments to eligible producers for pecan losses due to Hurricane Michael. Pecan trees were severely impacted by Hurricane Michael, which damaged or destroyed pecan trees, requiring the removal and replanting of trees. As a result, producers will have decreased production over several years

waiting for newly planted pecan trees to reach full production. From seedling, it takes on average for a pecan tree to reach full production maturity. Producers are eligible to receive a payment for a variable rate of lost production over the eight-year period of no production/limited production. Since there is no expected production in the first 5 years of growth, an unharvested payment factor of 80 percent will be applied for those five years to determine the adjusted payment rate for the overall eight years of growth. Based on current standard tree spacing of 10 trees per acre, lost acres will be determined by the number of trees lost, as reported by the producer to calculate the number of acres lost. To be eligible, a producer must show a minimum 15 percent production loss as a result of Hurricane Michael to qualify for the production loss payment. The following calculation will be used to calculate the assistance:

Trees lost, as reported by producer divided by 10 trees/acre = acres lost.
Acres lost x \$2,708 per acre = payment

Key notes/facts for pecans:

- 10 trees per acre is the industry average in Alabama
- ADA calculated the eight-year production loss of \$4,258.82 per acre until the pecan tree is at full production in the ninth year. Applying the unharvested payment factor of 80 percent for the first 5 years of the growth cycle results in an adjusted rate of \$3,611.54 further factored by a 75 percent payment factor results in the per acre rate of \$2,708 per acre.

Part 4: Uninsured Infrastructure

The State will issue payments to eligible producers for uninsured infrastructure losses due to Hurricane Michael. Similar to poultry houses, the hurricane had significant impacts to additional farming infrastructure such as green houses, commodity buildings, livestock barns, packing houses, etc. and irrigation structures. Eligibility is limited to those structures that had commodities present at the time of the hurricane that suffered losses due to the hurricane and does not include equipment buildings, repair shops, etc. In addition, for a producer to qualify for assistance, they must be able to show a 15 percent production loss of the commodity housed inside the farming infrastructure as a result of the hurricane. For irrigation structures reimbursement is limited to only the structure above the ground level and excludes generators, pumps and wells. The following calculations will be used:

Building structures: cost of repairs/restoration for an in-kind storage structure minus any insurance claim reimbursement= net loss x a 50 percent payment factor= payment. Such payment for all structures cannot exceed \$50,000.

Irrigation structures: costs of repairs/restoration for an in-kind irrigation structure minus any insurance claim reimbursement= net loss x a 50 percent payment factor= payment. Payment for all irrigation structures cannot exceed \$50,000.

Subject to the terms and conditions of the Agreement, the State will factor such formulas as to ensure that each eligible producer receives benefits not to exceed a combined payment limitation of \$900,000 for any or all Parts for which such producer receives a payment under this Agreement. The State will require eligible producers to provide certain information on enrollment applications. FSA and the State have agreed to the draft application language, data elements, and supporting documentation necessary to complete an application.

Part 5: Horticulture Crop Practice

The State will issue payments to eligible producers for horticulture crop practice losses due to Hurricane Michael. Hurricane Michael had an adverse impact on bare-ground practices, and the

following calculation will be used to compensate producers for the costs incurred to re-establish that practice. To be eligible, a producer must have suffered a 15 percent crop loss to qualify for the practice reimbursement on those acres damaged.

Bare-ground: Damaged acres x payment rate of \$360 per acre =
payment

Key factor/note for horticulture practice calculation: The bare-ground production costs as calculated by ADA resulted in an average of \$479.83 per acre with a 75 percent payment factor applied is \$360 per acre. These costs are to reimburse for production costs associated with land structure recovery, land prep including mowing and harrowing under damaged plants and cover crop to prevent erosion.

E. LINKAGE REQUIREMENTS.

1. Eligible producers who receive payments through this Agreement must obtain Federal Crop Insurance or NAP for the 2021 and 2022 reinsurance years in the county for the crops, trees, bushes and/or vines for which benefits are received and for the crops under or within such structures for which assistance is received under this Agreement and for which such coverage is available.
2. Eligible producers must obtain Federal Crop Insurance or Noninsured Crop Disaster Assistance (NAP) for all insurable crops, trees, bushes or vines at the 60/100 level of coverage (or equivalent) where insurance is available. Whole Farm Revenue Protection at the 60 percent level may also be purchased. A list of crops covered by Federal Crop Insurance is available through the Risk Management Agency's Actuarial Information Browser at <https://webapp.rma.usda.gov/apps/actuarialinformationbrowser/>. Where Federal crop insurance is not available, producers are required to purchase NAP coverage at the 60/100 level of coverage (or equivalent).
3. If a producer is ineligible to receive a NAP payment due to their average Adjusted Gross Income (AGI), they must purchase Whole Farm Revenue Protection (WFRP) at the 60/100 coverage level or equivalent, if qualified to purchase. If the producer's AGI exceeds the AGI limit for NAP eligibility and the producer cannot meet WFRP eligibility, then the producer is required to obtain NAP coverage at a level of 60/100 or equivalent, if available, including paying the administrative fee and filing an annual acreage report with FSA.
4. If a producer, who is a legal entity (including joint operation) dissolves; or a member, stockholder or partner leaves a legal entity and farms under a different Tax Identification Number (TIN), linkage requirements must be met for the applicant if the majority share of the persons receiving payments under the terms of this Agreement meet the linkage requirements.
5. If, after receiving payments under the terms of this Agreement a producer ceases to farm or does not have risk or interest in a crop for which assistance under this Agreement was provided, they will not be considered in violation of the linkage requirement.
6. Failure to meet linkage requirements shall result in a refund of all payments received under the terms of this Agreement. The State will make all reasonable efforts to collect refunds from producers when linkage requirements are not met and will remit any collected refunds to FSA within 60 days of actual receipt of such refunds. Reasonable efforts include notifying the producer

in an initial notification letter that a receivable for a refund of all payments is due. The State will send a first demand letter 30 calendar days after the initial notification letter was sent to the producer, notifying them of their legal obligation to refund the payment. If the payments have not been refunded, the State will send a second demand letter 30 days after the first demand letter is sent, indicating that if repayment is not received within 30 days the debt will be transferred to USDA. USDA will use all available means to collect the debt, including demand letters, administrative or Treasury offset.

7. Producers who are indebted to FCIC are unable to purchase crop insurance until the debt is satisfied, per RMA regulation. A producer indebted to FCIC is eligible to receive payments under the terms of this Agreement provided the linkage requirements are met. It is the producer's responsibility to satisfy the debt so crop insurance can be purchased in order to meet the linkage requirements per statute and this Agreement.
8. States are responsible for obtaining the producer's acknowledgment of linkage requirements, monitoring and enforcing the linkage requirements (with the assistance of FSA and RMA in identifying violators), collecting refunds from producers when linkage is not met, and to remitting the refunds to FSA.
9. For purposes of this Agreement, linkage requirement interpretations shall be made in a manner consistent with the FSA Wildfires and Hurricanes Indemnity Program+ 2-WHIP regulation and handbook in effect as of the date of this Agreement, including but not limited to the determination of the persons and entities that are required to meet (and to not meet) the linkage requirements.

F. STATE RESPONSIBILITIES.

The State is responsible for and shall do the following:

1. Establish application procedures for payment to eligible producers under the terms and conditions of this Agreement and any additional terms and conditions required by the State.
2. Determine eligibility of producers and provide cash payments directly to eligible producers.
3. Provide technical assistance to producers in the form of outreach and help in completing necessary application requirements.
4. Provide financial assistance to a person or legal entity that meets the definition of eligible producer under the definitions section of this Agreement and owned or had a financial interest in a farming operation as outlined in the definitions section of this Agreement. The person, partnership, or legal entity must submit to the State acceptable documentation, as determined by the State, which establishes the eligibility for payments.
5. Provide financial assistance to an eligible producer in an amount not to exceed the losses suffered by the producer as a result of Hurricane Michael as determined by the State. Require the producer to certify that lost income or expenses are greater than payment amount.
6. Require the producer via a signed authorization to agree to allow the State access to the farm and provide adequate documentation to assure the producer is in compliance with the terms of this Agreement.

7. Require the producer to certify that the statements made on the program application and any other program documents are true and correct and that applicants understand that any false statements made as part of the application, or any other program documents, can be the subject of substantial civil and/or criminal liability and sanctions. The State is responsible for enforcing all program requirements applicable to eligible producers who choose to be participants.
8. Require eligible producers to retain financial and other records relating to the funds for a period of 3 years after completion of the distribution of grant funds or until final resolution of any audit findings or litigation claims relating to the distribution of such funds, whichever is later.
9. Notify the producer that failure to provide access to required documentation will result in the producer being ineligible for any payments under this Agreement and be required to fully refund any such payments to the State.
10. The State must issue all payments under this agreement and return all funds not distributed to eligible producers to FSA within two years of the Agreement effective date. The State may continue to accrue and recover administrative costs throughout the Agreement period of performance, which commences upon final execution and continues through December 31, 2023.
11. Conduct internal reviews of the program to ensure applicants meet all eligibility conditions. As part of the State's internal reviews, the State agrees to review records, if applicable, to determine program compliance. The State agrees to conduct reviews in accordance with the administrative Work Plan as required under section G. 1 of the Agreement. One application will be accepted and reviewed per farming operation. Program documents will be available for FSA review during normal business hours with reasonable notice provided to the State in accordance with this Agreement.
12. To determine whether each applicant meets all eligibility requirements by requiring producers to provide verifiable and acceptable documentation to support any claims of losses.
13. Require the producer to give written consent to the State to share producer applications, data, and other relevant documents with FSA and RMA or any other government agency that reasonably request such information. Upon request from the State, FSA may provide the State with other assistance, such as service center space to assist the State in meeting the terms of this Agreement.
14. Have an audit of this program and respective responsibilities as required by 2 CFR Part 200, Subpart F, as amended. The audit will be provided to FSA upon completion.
15. If an eligible producer has an operation in more than one State, require the producer to acknowledge that assistance provided through this Agreement shall only be made and used for eligible purposes within the State and shall not be used in any other state or for any other purpose.
16. Any other such responsibilities, terms, and conditions that the State and producer agree to in any other related Agreement between the State and eligible producer.

G. ADDITIONAL REQUIREMENTS

1. The State will submit a work plan (Work Plan) to FSA by e-mailing it to the FSA Program Contact listed on the Notice of Award. All funding under this Agreement to

the State is contingent upon FSA's approval of the Work Plan. The Work Plan must provide a summary of how the State will implement the program, including, but not limited to:

- a. A copy of the State's application form
 - b. Payment calculations
 - c. Loss requirements
 - d. Required documentation
 - e. The State's methodology for conducting internal reviews of the program
 - f. Schedules for program enrollment, payment disbursements to producers, and program conclusion
 - g. An estimated budget of costs related to administration of the program, including a breakdown of cost categories to be included and an explanation how each one is used to support the program.
2. The State is responsible for reporting all the funds expended under this Agreement as may be required by the Internal Revenue Service and generally accepted accounting principles.

H. ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions apply to this Award:

1. **APPLICABLE PROGRAMS AND AUTHORITIES.** Catalog of Federal Domestic Assistance (CFDA) programs and related regulatory authorities covered by this Award include:

CFDA Number	Program
10.129	Wildfire and Hurricane Indemnity Program Plus

2. APPLICABLE REGULATIONS

- i. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.govinfo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
 - A. 2 CFR Part 25, "Universal Identifier and System of Award Management"
 - B. 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
 - C. 2 CFR Part 175, "Award Term for Trafficking in Persons"
 - D. 2 CFR Part 180, "OMB Guidelines to Agencies On Governmentwide Debarment And Suspension (Nonprocurement)"
 - E. 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
 - F. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and

- Audit Requirements for Federal Awards"
- G. 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"
- viii. 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
- ix. 2 CFR Part 418, "New Restrictions on Lobbying"
- x. 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"
- xi. 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"

3. REPORTING REQUIREMENTS.

The State must:

- a. Submit two SF-425 Financial Reports (one reflecting funds for producer payments and one reflecting funds for administrative expenses) on a quarterly basis to the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to FPAC.BC.GAD@usda.gov and the Farm Service Agency (FSA) Safety Net Division via email to amy.mitchell1@usda.gov and angela.nuttal@usda.gov. Reports are due 30 calendar days after the reporting period on January 31, April 30, July 31, October 31. (Please note that financial reporting is based on the calendar year.)
- b. Submit performance progress reports bi-weekly by close of business each Wednesday for the previous week via e-mail to FPAC.BC.GAD@usda.gov with a copy to amy.mitchell1@usda.gov and kimberly.graham@usda.gov. The reports must contain the following information for the most recent week and cumulatively:
 - i. The number of applications;
 - ii. The number of applications approved;
 - iii. The amount of dollars disbursed;
 - iv. The number of reviews conducted;
 - v. Administrative expenditures;
 - vi. Significant developments including:
 - Problems, delays, or adverse conditions; and estimated time frames as to when these "significant developments" will be resolved and who is responsible for resolving them
 - Favorable developments.

4. PAYMENT INFORMATION. Payments under this Award will be made:

- a. To the State through electronic funds transfer authorized by SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form;
- b. Upon submission to FPAC.BC.GAD@usda.gov of a properly executed SF-270, Request for Advance or Reimbursement, with appropriate supporting documentation, and approval of the Work Plan (including estimated administrative budget) described in section G.1.

5. RESTRICTIONS ON LOBBYING.

The State certifies, to the best of his/her/its knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The State shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly. (Producers receiving payments hereunder are not considered sub-recipients for the purposes of this provision.)

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section I 352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$100,000 for each such failure."

6. **CORRESPONDENCE.** All correspondence regarding this Award must be identified with the Award and Federal Award Identification Numbers as shown above.
7. **PUBLICATIONS AND ACKNOWLEDGEMENT OF FEDERAL SUPPORT.** The State must acknowledge FSA support, whether cash or in-kind, in any publications written or published (including via the internet) with Federal support and on any publications reporting the results of, or describing, a Federally-supported activity as follows:

"This material is based upon work supported by the U.S. Department of Agriculture, Farm Service Agency, under Federal Award Identification No. FSA21GRA0010554."

All such materials must also contain the following disclaimer:

"Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services. In addition with respect to any opinions, findings, conclusions, or recommendations expressed herein, neither the United States Government nor the Cooperative Processor makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information,

apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Users bear the sole responsibility for decisions affecting program participation and may want to consult other resources."

All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

"USDA is an equal opportunity provider, employer, and lender."

The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

8. FRAUD, WASTE, AND ABUSE.

- a. The State may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality Agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated representative of a Federal department or agency authorized to receive such information.
- b. The State must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality Agreements inconsistent with paragraph (a) of this award provision are no longer in effect.
- c. The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form used by a Federal department or agency governing the nondisclosure of classified information.
- d. If the Government determines that the State is not in compliance with this award provision, it:
 - i. Will prohibit the State's use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), or any successor provision of law; and
 - ii. May pursue other remedies available for the State's material failure to comply with award terms and conditions.

The U.S. Department of Agriculture's Office of Inspector General maintains a toll-free telephone number, 800-424-9121, for receiving information concerning fraud, waste, or abuse. Such reports are kept confidential and callers may decline to give their names if they choose to remain anonymous.

9. STATE OF ALABAMA KEY PERSONNEL. State of Alabama key contacts include:

Hassey Brooks
hassey.brooks@agi.alabama.gov
(334) 240-3877

10. FSA KEY PERSONNEL. FSA key personnel include:

Amy Mitchell
amy.mitchell1@usda.gov
(202) 720-8954

Kim Graham
kimberly.graham@usda.gov
(202) 692-5277

11. MANDATORY DISCLOSURES. The provisions of 2 CFR § 200.113 regarding mandatory disclosures apply to this Award.

12. AMENDMENT AND RENEWAL. This Award may be amended in writing by mutual consent of the parties, including to extend the period of performance or duration of the Award to provide additional time to accomplish the objectives of the Award.

13. SUBAWARDS AND CONTRACTS. The subawarding, transferring, or contracting out of any work under this Award is not authorized without prior written approval and formal agreement amendment.

**14. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL
CONFIDENTIALITY AGREEMENTS**

- a. Activities performed under this award, may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FSA.
- b. The State's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The State's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

15. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

The State agrees to comply with FSA guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791, as described below.

- a. Responsibilities

- i. Acceptance of this award indicates acknowledgment and understanding that the State is legally bound by Federal statute to comply with the provisions of Section 1619 and that the State will not subsequently disclose information protected by Section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The State will be held responsible should disclosure of the protected information occur.
- ii. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the State to comply with the provisions in Section 1619. The State must consult with FSA prior to providing protected information to an entity or individual outside of the State and as necessary to implement the program to ensure that such release is permissible.
- iii. The State will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.
- iv. The State must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
- v. The provisions in Section 1619 are continuing obligations. Even when the State is no longer a party to an agreement with FSA, or when individuals currently affiliated with the State become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
- vi. The State must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- vii. When the State is unsure whether particular information is covered or protected by Section 1619, the State must consult with FSA to determine whether the information must be withheld.
- viii. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FSA. The State must provide to FSA written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
- ix. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

a. Protected Information

- i. Examples of the types of information prohibited by disclosure under Section 1619 include, but are **not limited to**, the following:
 - A. State identification and county number (where reported and where located).
 - B. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
 - C. Farm, tract, field, and contract numbers.
 - D. Production shares and share of acres for each Farm Serial Number (FSN) field.
 - E. Acreage information, including crop codes.
 - F. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System.
 - G. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
 - H. Location of conservation practices.
 - ii. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the State shall consult with FSA if there is any uncertainty as to the provision of such information.
 - iii. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any-(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The State must consult with FSA as to whether specific information falls within this exception prior to relying on this exception.
- c. Violations. The State will be held responsible for violations of this provision and Section 1619. A violation of this provision by the State may result in action by FSA, including termination of the underlying Federal award.
- d. Effective Period. The requirements of this provision are effective on the date of the final signature and will continue until FSA notifies the State that it is no longer required based on changes in applicable Federal law.

16. SPECIAL PROVISIONS

- a. The State assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- b. Employees of FSA will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the State. They also may not assist the State with efforts to lobby Congress or to raise money through fundraising efforts. Further, FSA employees must report to their immediate supervisor any negotiations with the State concerning future employment and must refrain from participation in projects or agreements with it.
- c. Employees of State will not be considered Federal employees or agents of the United

States for any purposes under this agreement.

- d. The State and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FSA agency clients in the course of carrying out activities under this agreement, including any products or services offered by the State, except as may be specifically allowed in the agreement.

17. PROHIBITIONS ON CERTAIN TECHNOLOGY PURCHASES

The State (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the State (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

- a. procure or obtain, extend or renew a contract to procure or obtain;
- b. enter into a contract (or extend or renew a contract) to procure; or
- c. obtain the equipment, services or systems.

18. GROUNDS FOR TERMINATION

In accordance with 2 CFR 200.340, the State understands this agreement may be terminated in whole or in part as follows:

- a. By the Federal awarding agency or pass-through entity, if the State fails to comply with the terms and conditions of a Federal award;
- b. By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c. By the Federal awarding agency or pass-through entity with the consent of the State, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
- d. By the State upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

////

19. RECORD RETENTION.

The State must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the agreement statement of work.


Richard Fordyce



Administrator, Farm Service Agency

12/15/2020
Date

Rick Pate



Commissioner,
Alabama Department of Agriculture and Industries

12-14-20
Date